

Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion.

Unless the court orders otherwise, an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

Comment to 2012 Amendment

The language of Rule 705 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The reference to an “inference” has been deleted on the grounds that the deletion made the rule flow better and easier to read, and because any “inference” is covered by the broader term “opinion.” Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Cases

705.020 A witness may disclose the facts or data upon which the witness relied, but only for the limited purpose of disclosing the basis of the opinion and not as substantive evidence.

State v. Hummert, 188 Ariz. 119, 933 P.2d 1187 (1997) (court noted that otherwise inadmissible scientific evidence would not be admitted as substantive evidence).

705.040 An expert witness may be cross-examined about facts or data the expert considered in formulating the opinion, and about facts or data the expert considered but rejected in formulating the opinion.

Standard Chartered PLC v. Price Waterhouse, 190 Ariz. 6, 945 P.2d 317 (Ct. App. 1996) (in litigation over sale of bank, plaintiff-purchaser claimed that \$23 million loss reserve figure supplied by defendant-seller understated amount of uncollectible loans; defendant-seller sought to introduce tax filing made by plaintiff-purchaser 1½ years after sale showing a loss reserve of \$9.8 million; trial court excluded this evidence because defendant-seller's expert witness could not testify to what plaintiff-purchaser actually did in preparing tax filing and could only testify about what plaintiff-purchaser should have done; court held there was sufficient factual basis for the evidence and thus it should have been admitted, and that plaintiff-purchaser could have used any contrary evidence in cross-examination).

705.050 An expert witness may not be cross-examined on the basis of facts or data upon which the expert did not rely in formulating the opinion, when the material is itself inadmissible.

Cervantes v. Rijlaarsdam, 190 Ariz. 396, 949 P.2d 56 (Ct. App. 1997) (although expert read report, he did not consider or rely on it, thus trial court properly precluded cross-examining expert about report).

April 10, 2013

ARIZONA EVIDENCE REPORTER